

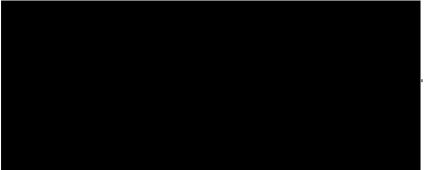


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [REDACTED] Office: Nebraska Service Center

Date: AUG 10 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Refugee Travel Document Pursuant to Title 8, Code of Federal Regulations, Part 223.2(b)(2)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

John F. O'Reilly

Terrence M. O'Reilly, Director
Administrative Appeals Office

Aug 10 2000-011223

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of [REDACTED] who is seeking to obtain a refugee travel document pursuant to 8 C.F.R. 223.2(b)(2).

The director denied the application after determining that the applicant was not in the United States at the time the application was filed. While it is noted that the director's denial was based on an application for a reentry permit, the record reflects that the applicant filed for issuance of a refugee travel document rather than a reentry permit. However, because regulations at 8 C.F.R. 223.2(b) require that applicants for either a reentry permit or a refugee travel document must be in the United States when the application is filed, this case will not be remanded to the director but, rather, adjudicated accordingly.

On appeal, the applicant states that he applied for a travel document in order to make a trip to [REDACTED] to attend a wedding in November 1999. He further states that a previously-issued travel document had expired, but he had not traveled outside the United States since he was granted asylee status.

8 C.F.R. 223.2(b)(2) states, in pertinent part:

Except as otherwise provided in this section, an application may be approved if filed by a person who is in the United States at the time of application, and either holds valid refugee status under section 207 of the Act, valid asylum status under section 208 of the Act, or is a permanent resident and received such status as a direct result of his or her asylum or refugee status.

Regulations at 8 C.F.R. 223.2(b) require that the application be filed with the Service prior to departure from the United States. Further, 8 C.F.R. 103.2(a)(1) provides that every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instruction on the form. The instructions attached to the Form I-131 state in pertinent part:

Processing Information. Acceptance....an application is not considered properly filed until it is accepted by the Service.

8 C.F.R. 103.2(a)(7)(i) states in pertinent part:

An application or petition received in a Service office shall be stamped to show the time and date of actual

receipt and....shall be regarded as properly filed when so stamped, if it is properly signed and executed and the required filing fee is attached or a waiver of the filing fee is granted....

The application for refugee travel document was filed on March 9, 1999. The record, however, reflects that the petitioner's intended departure from the United States was December 1998. On April 5, 1999, the applicant was requested to submit, among other documents, evidence to establish his actual date of departure from the United States. While the applicant submitted additional evidence, he failed to establish the actual date of his departure.

On appeal, the applicant submits evidence that he was granted asylum on August 1, 1995, and he was subsequently granted permanent resident status on March 9, 1999. The applicant claims that although he applied for a travel document in order to attend a wedding in [REDACTED] in November 1999, he had not traveled outside the United States since he was granted asylee status. He submits copies of his pay stubs for pay periods beginning April 12, 1999 through June 20, 1999.

The applicant, however, has failed to establish that he was in the United States at the time the application for a travel document was filed with the Service on March 9, 1999, as required by 8 C.F.R. 223.2(b).

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.